IN THE HIGH COURT OF UTTARANCHAL AT

NAINITAL

A.O. NO. 413 OF 2004

Narendra Kumar .....Petitioner

Versus

Smt. Usha Rani @ Vineeta & others. .....Respondent.

Hon'ble Rajesh Tandon, J.

Heard Sri Arvind Vashishth and N.S. Pundir, counsel for the appellant.

By the present appeal, the appellant has challenged the order passed by the Additional District Judge, IIIrd F.T.C., Hardwar dated 9th August, 2004.

Briefly stated, a suit was filed by the plaintiff/respondent no. 1 Smt. Usha Rani being Suit No. 57 of 2004 praying for a decree for permanent injunction restraining the respondents no. 1 and 2 namely Smt. Neha and Sri Narendra not to interfere in the business of the plaintiff and further not to interfere In the network, Lalji City Vision, B.H.E.L. at Hardwar as a partner. Further prayer has been made directing the respondents to render accounts from 14.01.2004.

Briefly stated, according to the plaint averments, the plaintiff/respondent no. 1 namely Smt. Usha Rani was married with late Sri Vinod Kumar on 29.07.1988 proprietor of M/s Lalji Electronics. On 13th July, 1999, she was blessed with a

daughter i.e. Kumari Renu, who has been arrayed as plaintiff no.2. Later on she came to know that her husband had expired.

The plaintiffs have claimed that the property mentioned in schedule 'अ' is the property of late Sri Vinod Kumar, her husband and in the township of B.H.E.L. she is running the network in the partnership and has invested lacs of amount. After the death of Sri Viond Kumar, she is the only heir of the entire property left by Sri Vinod Kumar.

So far as the defendants no. 3 and 4 namely Prabhakar Dheeman and Jitendra Pal Singh are concerned, they are co-partners in the firm City Vision B.H.E.L. at Hardwar. Defendant no.5 is also a partner in Lalji City Vision at Hardwar and doing the business of City Vision at Hardwar.

Along with the suit, the plaintiffs have filed an application under Order 39 Rule 1 C.P.C. for injunction. The trial court has passed the order that the entire accounts of the network may be given to the plaintiff/respondent no.1.

Four appeals were filed against the said order. The details of the Appeals are as under:-

A.O.300 of 2004 Prabhakar Dhiman

Vs.

Smt. Usha Rani & others.

A.O.347 of 2004 Smt. Gurdeep Kaur

Vs.

Smt. Usha Rani @ Vineeta & others.

A.O. No. 348 of 2004 Smt. Usha Rani @ Vineeta

Vs.

Smt. Neha and others.

A.O. No.413 of 2004 Narendra Kumar

Vs

Smt. Usha Rani @ Vineeta and others.

By way of the appeal, Narendra Kmar has also challenged the said order. Smt. Usha Rani, plaintiff/respondent no. 1 herself has challenged the said order and the same order has also been challenged by Sri Narendra Kumar, defendant no. 2.

The trial Court vide his order dated 9th August, 2004 passed the following order:-

"प्रार्थना पत्र 7ग–2 में वादीगण द्वारा चाहे गये एकाउन्ट के अनुतोष को स्वीकार किया जाता है तथा प्रतिवादी सं0 2 को आदेशित किया जाता है कि प्रतिवादी सं0 2 प्रश्नगत केबिल नेटवर्क के आय व्यय का पूर्ण एकाउन्ट वादी प्रस्तुत करने के दिनांक से अब तक का प्रत्येक माह का अन्दर दस दिन एवं अगले प्रत्येक माह का एकाउन्ट इस मुकदमें में प्रस्तुत करे। शेष अनुतोष के सम्बन्ध में प्रार्थना पत्र 7ग.2 निरस्त किया जाता है। जिला मजिस्ट्रेट कार्यालय से कागज संख्या 29ग–1 व 40ग–1 के मूल को तलब किया जाये । प्रतिवादी संख्या दो अगले प्रत्येक माह का एकाउन्ट उसके अगले माह के तीन तारीख तक प्रस्तुत करें।

वास्ते तनकीह विरचन व अग्रिम आदेश पत्रावली दिनांक 13.9.2004 को पेश हो।"

All the parties including the plaintiffs have submitted that the order is without jurisdiction in as much as no such relief was ever asked by her and therefore, the accounting which has been directed to take place is wholly without jurisdiction.

A perusal of the order passed by the court below shows that the accounts have been directed in respect of network for the defendant no. 2 alone and no direction has been given to any other person. The applicants are agreeable that let the suit itself be decided at an early date.

In view of the above the Civil Judge is directed to decide the suit itself within a period of three months from the filing of the certified copy of the order. The order passed by the Additional District Judge dated 9th August, 2004, therefore, is modified to this extent that the parties shall maintain status quo.

Subject to the aforesaid, all the appeals are disposed of.

However, the parties shall not create third party interest during the pendency of the suit.

Any observation made above will not affect the merits of the suit itself.

02.11.2004 (RAJESH TANDON, J.)

P.S.R.